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14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16
17 VIA LICENSING CORPORATION,

18 Plaintiff,

19 v.

20 HISENSE INTERNATIONAL CO., LTD and
HISENSE USA CORPORATION,

21 Defendants.
22

Case No. 4:18-cv-01206-YGR

**STIPULATED PROTECTIVE
ORDER**

As Modified by the Court

1 **I. PURPOSES AND LIMITATIONS**

2 Disclosures and discovery in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from
4 use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
5 parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Stipulated Protective Order does not confer blanket
7 protections on all disclosures or responses to discovery and that the protection it affords from
8 public disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further acknowledge, as
10 set forth in paragraph 12.3, below, that this Stipulated Protective Order does not entitle them to
11 file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must
12 be followed and the standards that will be applied when a party seeks permission from the Court
13 to file material under seal.

14 **II. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
16 or items under this Stipulated Protective Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and In-house Counsel (as well as
21 their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items that it
23 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL.”

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
26 manner in which it is generated, stored, or maintained (including, among other things,
27 testimony, transcripts, and tangible things), that are produced or generated in disclosures
28 or responses to discovery in this matter.

- 1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
2 litigation who has been retained by a Party or its counsel to serve as an expert witness or
3 as a consultant in this action.
- 4 2.7 “HIGHLY CONFIDENTIAL” Information or Items: especially sensitive “Confidential
5 Information or Items,” disclosure of which to another Party or Non-Party would create a
6 substantial risk of serious harm that could not be avoided by less restrictive means,
7 including but not limited to highly confidential technical, financial, research, and
8 development information.
- 9 2.8 In-house Counsel: attorneys who are employees of a party to this action and employees
10 within a party’s legal department who report directly to an attorney, or employees of a
11 party who are responsible for legal matters of the party regarding this litigation. In-house
12 Counsel do not include Outside Counsel of Record or any other outside counsel.
- 13 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity
14 not named as a Party to this action.
- 15 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but
16 are retained to represent or advise a party to this action and have appeared in this action
17 on behalf of that party or are affiliated with a law firm which has appeared on behalf of
18 that party.
- 19 2.11 Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).
- 21 2.12 Privileged Material: any Disclosure or Discovery Material protected by the attorney-
22 client privilege, the work product doctrine, or any other privilege or protection from
23 disclosure recognized under applicable law.
- 24 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
25 this action.
- 26 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
27 photocopying, videotaping, translating, preparing exhibits or demonstrations, and
28

organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL.”

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

III. SCOPE

The protections conferred by this Stipulated Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulated Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Stipulated Protective Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

IV. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be either (1) dismissal of all claims and defenses in this action, with or without prejudice; or (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

1 **V. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
3 Non-Party that designates information or items for protection under this Stipulated Protective
4 Order must take care to limit any such designation to specific material that qualifies under the
5 appropriate standards. The Designating Party must designate for protection only those material,
6 documents, items, or oral or written communications that qualify, so that other documents, items,
7 or communications for which protection is not warranted are not swept unjustifiably within the
8 ambit of this Stipulated Protective Order.

9 Mass, indiscriminate, or routinized designations are prohibited. If it comes to the
10 Designating Party's attention that information or items that it designated for protection do not
11 qualify for protection at all, or do not qualify for the level of protection initially asserted, that
12 Designating Party must promptly notify all other Parties that it is withdrawing the designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Stipulated
14 Protective Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
15 or ordered, Disclosure or Discovery Material that qualifies for protection under this Stipulated
16 Protective Order must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Stipulated Protective Order requires:

18 (a) For information in documentary form (*e.g.*, paper or electronic documents,
19 but excluding transcripts of depositions or other pretrial or trial proceedings), the Producing
20 Party must affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to each
21 document that contains Protected Material (except that a document produced in native form (*e.g.*,
22 Excel documents) shall have the confidentiality designation appended to its file name instead or
23 shall otherwise be designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at the
24 time of it is copied and produced).

25 A Party or Non-Party that makes original documents or materials available for inspection
26 need not designate them for protection until after the inspecting Party has indicated which
27 material it would like copied and produced. During the inspection and before the designation, all
28 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL."

1 After the inspecting Party has identified the documents it wants copied and produced, the
2 Producing Party must determine which documents, or portions thereof, qualify for protection
3 under this Stipulated Protective Order. Then, before producing the specified documents, the
4 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
5 CONFIDENTIAL”) to each page that contains Protected Material (except that documents
6 produced in native form (*e.g.*, Excel documents) need not be affixed with a confidentiality
7 designation).

8 (b) For testimony given in deposition or in other pretrial or trial proceedings,
9 the Designating Party may invoke on the record (before the deposition, hearing, or other
10 proceeding is concluded) a right to have up to 30 days to identify the specific portions of the
11 testimony as to which protection is sought and to specify the level of protection being asserted.
12 Only those portions of the testimony that are appropriately designated for protection within the
13 30 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a
14 Designating Party may specify, at the deposition or up to 30 days afterwards if that period is
15 properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL.” In the absence of a contrary designation on the record at the time the
17 testimony is given, during the 30 days and prior to a designation being made, the testimony shall
18 be deemed “HIGHLY CONFIDENTIAL.”

19 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
20 or other proceeding to include Protected Material so that the other parties can ensure that only
21 authorized individuals specified below in paragraphs 7.2 and 7.3 are present at those
22 proceedings. The use of a document as an exhibit at a deposition, hearing or other proceeding
23 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL.”

25 Transcripts containing Protected Material shall have an obvious legend on the title page
26 that the transcript contains Protected Material, and the title page shall be followed by a list of all
27 pages (including line numbers as appropriate) that have been designated as Protected Material
28 and the level of protection being asserted by the Designating Party. The Designating Party shall

1 inform the court reporter of these requirements. Any transcript that is prepared before the
2 expiration of a 30-day period for designation shall be treated during that period as if it had been
3 designated “HIGHLY CONFIDENTIAL” in its entirety unless otherwise agreed. After the
4 expiration of that period, the transcript shall be treated only as actually designated.

5 (c) For information produced in some form other than documentary and for
6 any other tangible items, the Producing Party must affix in a prominent place on the exterior of
7 the container or containers in which the information or item is stored the legend
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

9 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
10 information or items does not, standing alone, waive the Designating Party’s right to protection
11 under this Stipulated Protective Order for such material. Upon correction of a designation, the
12 Receiving Party must make reasonable efforts to assure that the material is treated in accordance
13 with the provisions of this Stipulated Protective Order.

14 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
18 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the
20 original designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall provide written notice of each designation
22 it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a
23 challenge has been made, the written notice must recite that the challenge to confidentiality is
24 being made in accordance with this specific paragraph of the Stipulated Protective Order. The
25 parties shall attempt to resolve each challenge in good faith and must begin the process by
26 conferring directly (by telephone or in-person) within 14 days of the date of service of notice. In
27 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
28 designation was not proper and must give the Designating Party an opportunity to review the

1 designated material, to reconsider the circumstances, and, if no change in designation is offered,
2 to explain the basis for the chosen designation. A Challenging Party may seek judicial
3 intervention to resolve the designation only if it has engaged in this meet and confer process first
4 or establishes that the Designating Party is unwilling to participate in the meet and confer
5 process in a timely manner.

6 **6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court**
7 **intervention, the parties shall follow the Court's Standing Order in Civil Cases regarding**
8 **Discovery and Discovery Motions. The parties may file a joint letter brief regarding**
9 **retaining confidentiality within 21 days of the initial notice of challenge or within 14 days of**
10 **the parties agreeing that the meet and confer process will not resolve their dispute,**
11 **whichever is earlier. Failure by a Designating Party to file such discovery dispute letter**
12 **within the applicable 21 or 14 day period (set forth above) with the Court shall**
13 **automatically waive the confidentiality designation for each challenged designation. If,**
14 **after submitting a joint letter brief, the Court allows that a motion may be filed, any such**
15 **motion must be accompanied by a competent declaration affirming that the movant has**
16 **complied with the meet and confer requirements imposed in the preceding paragraph. The**
17 **Court, in its discretion, may elect to transfer the discovery matter to a Magistrate Judge.**

18 In addition, the parties may file a joint letter brief regarding a challenge to a
19 confidentiality designation at any time if there is good cause for doing so, including a
20 challenge to the designation of a deposition transcript or any portions thereof. If, after
21 submitting a joint letter brief, the Court allows that a motion may be filed, any motion
22 brought pursuant to this provision must be accompanied by a competent declaration
23 affirming that the movant has complied with the meet and confer requirements imposed by
24 the preceding paragraph. The Court, in its discretion, may elect to refer the discovery
25 matter to a Magistrate Judge.

26 The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
28 harass or impose unnecessary expenses and burdens on other parties) may expose the
Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality

1 designation by failing to file a letter brief to retain confidentiality as described above, all
2 parties shall continue to afford the material in question the level of protection to which it is
3 entitled under the Producing Party's designation until the court rules on the challenge.

4 VII. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
7 defending, or attempting to settle or otherwise resolve this litigation or any of the claims and
8 defenses asserted in this litigation. Such Protected Material may be disclosed only to the
9 categories of persons and under the conditions described in this Order. When the litigation has
10 been terminated, a Receiving Party must comply with the provisions of paragraph 13 below
11 (FINAL DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a location and
13 in a secure manner that ensures that access is limited to the persons authorized under this
14 Stipulated Protective Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
16 the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
17 information or item designated "CONFIDENTIAL" only to:

- 18 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
19 employees of said Outside Counsel of Record to whom it is reasonably
20 necessary to disclose the information for this litigation;
- 21 (b) the officers, directors, and employees (including In-house Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this
23 litigation;
- 24 (c) Experts (as defined in this Stipulated Protective Order) of the Receiving
25 Party to whom disclosure is reasonably necessary for this litigation and
26 who have signed the "Acknowledgment and Agreement to Be Bound" that
27 is attached hereto as Exhibit A;
- 28 (d) the Court and its personnel;

- 1 (e) court reporters and their staff, professional jury or trial consultants, mock
2 jurors, and Professional Vendors to whom disclosure is reasonably
3 necessary for this litigation and who have signed the “Acknowledgment
4 and Agreement to Be Bound” (Exhibit A);
- 5 (f) during their depositions, witnesses in the action to whom disclosure is
6 reasonably necessary, unless otherwise agreed by the Designating Party or
7 ordered by the Court. Pages of transcribed deposition testimony or
8 exhibits to depositions that reveal Protected Material must be separately
9 bound by the court reporter and may not be disclosed to anyone except as
10 permitted under this Stipulated Protective Order; and
- 11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the
13 information prior to its production by the Producing Party in this litigation
14 or who came into possession of the information by means other than
15 disclosure by the Receiving Party.

16 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless otherwise
17 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
18 disclose any information or item designated “HIGHLY CONFIDENTIAL” to:

- 19 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
20 employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this litigation;
- 22 (b) no more than two In-House Counsel of the Receiving Party (1) who are
23 licensed to practice in at least one state in the United States or in China, or
24 who report directly to such an individual and who works in the Receiving
25 Party’s legal department, or employees of a party who are responsible for
26 legal matters of the party regarding this litigation, and who have no
27 involvement in competitive decision making, (2) to whom disclosure is
28 reasonably necessary for this litigation, and (3) who have signed the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
2 Exhibit A;

- 3 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
4 necessary for this litigation, (2) who have signed the “Acknowledgment
5 and Agreement to Be Bound” that is attached hereto as Exhibit A, and
6 (3) as to whom the procedures set forth in paragraph 7.4(a), below, have
7 been followed;
- 8 (d) the Court and its personnel;
- 9 (e) court reporters and their staff, professional jury or trial consultants, and
10 Professional Vendors to whom disclosure is reasonably necessary for this
11 litigation and who have signed the “Acknowledgment and Agreement to
12 Be Bound” (Exhibit A); and
- 13 (f) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the
15 information prior to its production by the Producing Party in this litigation
16 or who came into possession of the information by means other than
17 disclosure by the Receiving Party.

18 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
19 CONFIDENTIAL” Information or Items to Experts.¹

20 (a) Unless otherwise ordered by the Court or agreed to in writing by the
21 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Stipulated
22 Protective Order) any information or item that has been designated “HIGHLY
23 CONFIDENTIAL” pursuant to paragraph 7.3(b) first must make a written request to the
24 Designating Party that (1) sets forth the full name of the Expert and the city and state of his or
25 her primary residence, (2) attaches a copy of the Expert’s current resume, (3) identifies the

26
27 ¹ “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information or items may be
28 disclosed to an Expert without disclosure of the identity of the Expert as long as the Expert is not
a current officer, director, or employee of a competitor of a Party or anticipated to become one.

1 Expert's current employer(s), (4) identifies each person or entity from whom the Expert has
2 received compensation or direct funding for work in his or her areas of expertise or to whom the
3 expert has provided professional services, including in connection with a litigation, at any time
4 during the preceding five years, and (5) identifies (by name and number of the case, filing date,
5 and location of court) any litigation in connection with which the Expert has offered expert
6 testimony, including through a declaration, report, or testimony at a deposition or trial, during the
7 preceding five years.

8 (b) A Party that makes a request and provides the information specified in the
9 preceding respective paragraphs may disclose the designated "HIGHLY CONFIDENTIAL"
10 Protected Material to the identified Expert unless, within 10 days of delivering the request, the
11 Party receives a written objection from the Designating Party. Any such objection must set forth
12 in detail the grounds on which it is based.

13 (c) A Party that receives a timely written objection must meet and confer with
14 the Designating Party (by telephone or in-person) to try to resolve the matter by agreement
15 within seven days of the written objection. If no agreement is reached, the Party seeking to make
16 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in
17 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do
18 so. Any such motion must describe the circumstances with specificity, set forth in detail the
19 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm (or lack
20 thereof) that the disclosure would entail, and suggest any additional means that could be used to
21 reduce that risk. In addition, any such motion must be accompanied by a competent declaration
22 describing the parties' efforts to resolve the matter by agreement (*i.e.*, the extent and the content
23 of the meet and confer discussions) and setting forth the reasons advanced by the Designating
24 Party for its refusal to approve the disclosure.

25 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
26 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
27 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.
28

1 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
2 **OTHER LITIGATION**

3 If a Party is served with a discovery request, subpoena or a court order issued in another
4 litigation that compels disclosure of any information or items designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” that Party must:

- 6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the request, subpoena or court order;
8 (b) promptly notify in writing the party who caused the request, subpoena or
9 order to issue in the other litigation that some or all of the material covered
10 by the request subpoena or order is subject to this Stipulated Protective
11 Order. Such notification shall include a copy of this Stipulated Protective
12 Order; and
13 (c) cooperate with respect to all reasonable procedures sought to be pursued
14 by the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the
16 subpoena or court order shall not produce any information designated in this action as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” before a determination by the court from
18 which the request, subpoena or order issued, unless the Party has obtained the Designating
19 Party’s permission. The Designating Party shall bear the burden and expense of seeking
20 protection in that court of its confidential material. Nothing in these provisions should be
21 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
22 directive from another court.

23 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
24 **THIS LITIGATION**

25 (a) The terms of this Stipulated Protective Order are applicable to information
26 produced by a Non-Party in this action, which the Non-Party can designate as
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” as provided herein. Such information
28 produced by Non-Parties in connection with this litigation is protected by the remedies and relief

provided by this Stipulated Protective Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- 1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 2) promptly provide the Non-Party with a copy of this Stipulated Protective Order, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- 3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were

made of all the terms of this Stipulated Protective Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is Privileged Material, the Receiving Parties shall comply with Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d) and (e), the Parties agree, and the Court orders, that the procedure set forth below provides the Producing Party a method for retrieving or “clawing back” inadvertently produced Privileged Material, subject to any resolution of any dispute over the privileged or protected status of the Privileged Material, and for foreclosing any arguments of waiver, subject to the procedures outlined below for bringing disputed claims to the Court for resolution.

(a) If a Producing Party has a good faith belief that Privileged Material has been inadvertently produced, and at any time notifies Receiving Parties in writing that the Producing Party disclosed Privileged Material (an “Inadvertent Disclosure Notice”), or any Party or Non-Party receiving Privileged Material discovers such disclosure (in which case the Receiving Party shall give the Producing Party prompt written notice), then, consistent with Federal Rule of Evidence 502(d), the inadvertent production of Privileged Material shall not be deemed a waiver — in the above-captioned action or in any other proceeding, including in Federal, State, arbitral or foreign proceedings — of the applicable privilege, protection, or prohibition from disclosure.

(b) Upon receipt of any Inadvertent Disclosure Notice claiming that a document is or includes Privileged Material, all other Parties (regardless of whether they agree with the claim of privilege or work-product protection) shall promptly:

- 1) use reasonable efforts to destroy or sequester all copies of the inadvertently produced documents or material in their possession, custody, or control and notify the Producing Party that they have done so; and

1 2) take reasonable steps to retrieve and destroy or sequester the
2 inadvertently produced documents or material from other persons,
3 if any, to whom such documents or material have been provided
4 consistent with Federal Rule of Civil Procedure 26(b)(5)(B), and
5 notify the Producing Party that they have done so.

6 (c) To the extent a Receiving Party disputes the claim of privilege or
7 work-product protection (the “Disputing Party”), the Disputing Party shall notify in writing the
8 Producing Party of its position within thirty (30) days of receiving the Inadvertent Disclosure
9 Notice (a “Dispute Notification”). Within seven (7) days of receiving the Dispute Notification,
10 the Producing Party shall either withdraw its claim of privilege or confer with the Disputing
11 Party in an effort to resolve their disagreement. If no such resolution is reached, the Disputing
12 Party may apply to the Court for a ruling on the Producing Party’s claim of privilege. In arguing
13 issues concerning protection for material claimed to constitute Privileged Material, no Party shall
14 assert as a basis for the relief it seeks (including if a Receiving Party seeks a ruling that the
15 disclosed information was never privileged) the fact or circumstance that such documents have
16 already been inadvertently produced in the above-captioned action. However, the Receiving
17 Party must comply with the provisions of Federal Rule of Civil Procedure 26(b)(5)(B) and
18 paragraph (b) above regardless of whether it disputes the claim of privilege or work-product
19 protection.

20 (d) If, during a deposition, a Party claims that a document being used in the
21 deposition (*e.g.*, marked as an exhibit, shown to the witness, or made the subject of examination)
22 is subject to privilege or work-product protection, it may at its sole election (a) allow the
23 document to be used in the deposition without waiver of its claim of privilege or work-product
24 protection or (b) consistent with Federal Rule of Civil Procedure 30(h)(3), instruct the witness
25 not to answer questions concerning the document pending a prompt resolution of any
26 disagreement concerning the document’s privileged or work-product protected status. If the
27 Party allows the examination concerning the document to proceed on a non-waiver basis, the
28 Parties shall sequester all copies of the purportedly privileged or work-product protected

document. Immediately following the deposition, the Parties will commence the procedure outlined in the preceding paragraphs to address the claim of privilege or other protection as to both the privileged document and any testimony provided concerning the document. If a Party disputes the claim of privilege or work-product protection, then until the dispute is resolved, no persons other than Outside Counsel of Record in this action and those present at the deposition will have any access to the inadvertently produced document and any testimony related thereto. If the Party instructs the witness not to answer questions concerning the document, the Parties will then cooperate in promptly submitting the issue of the document's status to the Court.

XII. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulated Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party other than the Designating Party or Producing Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the Court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

XIII. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline confirming that (1) the Protected Material in the possession of the Receiving Party has been returned or destroyed in accordance with this Stipulated Protective Order and (2) the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Stipulated Protective Order as set forth in paragraph 4.

IT IS SO STIPULATED, through Counsel of Record.

/s/ Laura Kabler Oswell

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ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatories above.

Dated: June 26, 2018

/s/ Laura Kabler Oswell
Laura Kabler Oswell

* * *

IT IS ORDERED that the forgoing Stipulated Protective Order is **APPROVED**.

Dated: June 27, 2018



THE HONORABLE YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Northern District of
California on [date] in the case of *Via Licensing Corporation v. Hisense International Co., Ltd.*
and Hisense USA Corporation, No. 4:18-cv-01206-YGR. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
will not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____